HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

* * * *

MA CMA No.1987 of 2010

&

Cross-Objections (SR) No.3234 of 2011 (IA No.2 of 2011)

Between:

National Insurance Company Ltd., rep. by its Divisional Manager, Ongole

..Appellant

And

Shaik Kuddush S/o Khasim Saheb & others

..Respondents

DATE OF JUDGMENT PRONOUNCED: 30.01.2020

SUBMITTED FOR APPROVAL:

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

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KONGARA VIJAYA LAKSHMI, J

***HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

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Between:

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..Appellant

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!Counsel for Appellant : Mr.Ravi Shankar Jandhyala

^Counsel for Respondents : 1. Mr. Nuthalapati Krishna Murthy
(Cross-Objections)

< Gist:

> Head Note:

? Cases referred: 1. (2014)1 SCC 244
2. 2004 ACJ 1
3. (2004) 13 SCC 224

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

M.A.C.M.A.No.1987 of 2010
&
Cross-Objections (SR) No.3234 of 2011 (IA No.2 of 2011)

COMMON JUDGMENT:

Aggrieved by the award passed by the Chairman, MACT cum VI Additional District Judge, Markapur in MV OP No.506 of 2009 dated 31.08.2010 in granting compensation of Rs.2,25,000/- with interest at 8% p.a., the 2nd respondent-insurer therein, filed the present appeal. Dissatisfied with the award, the claimants also filed Cross-objections seeking enhancement of the compensation.

2. The appellant in MA CMA is the 2nd respondent-insurer, respondents 2 and 3 are the claimants and the 3rd respondent is the owner of the tractor bearing No.AP 27 U 2383 and trailer bearing No.AP 27 U 2384 in the original petition. For the sake of convenience, the parties to this appeal are hereinafter referred to as they were arrayed before the Tribunal.

3. The petitioners filed claim petition under Section 163-A and 168 of the Motor Vehicles Act, claiming compensation of Rs.3,00,000/- for the death of the deceased Nayab Rasool, who died in a motor vehicle accident, that took place on 18.09.2009 at about 11.00 a.m. Case of the petitioners is that, the driver of the tractor bearing No.AP 27 U 2383 and trailer bearing No.AP 27 U 2384, without observing the surroundings reversed the tractor, in a rash and negligent manner and dashed the deceased, due to which the deceased fell down under the tyre of the trailer, causing his death instantaneously; police registered a case against the driver of the tractor; at the time of the accident, the deceased was 11 years old, studying 6th standard, with better prospects

of life; the 1st respondent is the owner and the 2nd respondent is the insurer; as the accident occurred on account of rash and negligent driving of the tractor, both the respondents are jointly and severally liable to pay the compensation to the petitioners.

4. The 1st respondent filed written statement before the Tribunal denying the allegations of the claim petition, contending that the driver of the tractor is having valid driving licence and that his vehicle was insured with the 2nd respondent and the policy was in force by the date of accident and hence, if the petitioners are entitled for compensation, the 2nd respondent, being the insurer, has to pay the same.

5. The 2nd respondent/insurer filed written statement before the Tribunal, denying the allegations of the claim petition and contending that there is no live coverage of the insurance policy at the time of accident; the tractor is registered under non transport category and the trailer is under agricultural purpose; at the time of accident, it was altered as water tanker for the purpose of carrying water in violation of terms of the policy and as such, the insurance company is not liable to pay the compensation and that the amount claimed is highly excessive.

6. Basing on the said pleadings, the Tribunal has framed three issues. On behalf of claimants, PW.1 was examined and Exs.A.1 to A.5 were marked. On behalf of the respondents, RWs.1 to 3 were examined and Exs.B.1 to B.5 were marked.

7. The Tribunal, on appreciation of pleadings, coupled with the contents of Exs.A.1-FIR and A.5-charge sheet, recorded a finding on issue No.1 that the accident occurred on account of rash and negligent driving of the driver of the 1st respondent; on issue No.2, the Tribunal

held that the 1st respondent is the owner and the 2nd respondent is the insurer and the policy was in existence as on the date of accident and that the petitioners are entitled for a total compensation of Rs.2,25,000/- with interest at 8% per annum from the date of petition, till the date of realization and directed the respondents to pay the same jointly and severally.

8. Heard Sri Ravi Shankar Jandhyala, learned counsel for the appellant and Sri Nuthalapati Krishna Murthy, learned counsel for respondents 1 and 2/cross-objectors. Though notice was served on the 3rd respondent, none appeared on his behalf. Perused the record.

9. Learned counsel for the appellant mainly contended that the Tribunal having concluded that there is violation of policy terms and conditions, erred in directing the insurance company to pay the compensation. He further contended that the Tribunal though fixed the notional income of the deceased at Rs.15,000/- per annum, but has not deducted 1/3rd towards personal expenses, that the awarding of interest at 8% p.a. is on higher side, and that the amount awarded to the petitioners is highly excessive and prays to allow the appeal.

10. Learned counsel for the cross-objectors/claimants contend that the Tribunal did not take into consideration the future prospects of the young boy, who died in an accident at the age of 11 years, and that the Tribunal ought to have allowed the claim in total.

11. Learned counsel for the appellant has not disputed the finding that the accident has occurred due to the rash and negligent driving of the tractor-trailer. A perusal of the evidence of PW.1, coupled with the contents of FIR and charge sheet, clearly show that the police registered

a case against the driver of the tractor and he was charge sheeted before the criminal Court. Therefore, the finding of the Tribunal on issue No.1 that the accident occurred due to the rash and negligent driving of the driver of the tractor needs no interference.

12. Coming to the claim, the contention of the learned counsel for the cross-objectors/petitioners is that at the time of accident, the deceased was aged 11 years and was studying 6th standard. He further contended though the petitioners claimed a sum of Rs.3,00,000/-, the Tribunal erred in awarding only a sum of Rs.2,25,000/- and the claimants are entitled for Rs.3,00,000/- as claimed for the death of their son. In support of his case, he placed reliance upon the decision of the Hon'ble Supreme Court in '***Kishan Gopal vs. Lala***[1]', wherein the Hon'ble Supreme Court awarded compensation of Rs.5,00,000/- to the parents for the death of their son, aged about 10 years in the accident. Relying on the above decision, he contended that the claim of the cross-objectors is reasonable and prays to allow the cross-objections. Learned counsel for the appellant-insurer contended that the amount awarded by the Tribunal is highly excessive, as the deceased was only 11 years and he was a non-earning person.

13. As seen from the above decision, the Hon'ble Supreme Court, relying on various decisions, held that, it would be just and reasonable to take the notional income of the deceased, who was aged 10 years at the time of accident, at Rs.30,000/- per annum and by applying the multiplier '15' (Rs.30,000/- x 15) awarded Rs.4,50,000/-, apart from awarding another sum of Rs.50,000/- towards conventional heads towards loss of love and affection, funeral expenses, last rites etc., in all Rs.5,00,000/- as compensation. The above proposition of law is not

[1] (2014) 1 SCC 244

disputed by the learned counsel for the appellant. In view of the decision of the Hon'ble Supreme Court, as the deceased in the present case is also aged 11 years, and as the claim of the cross-objectors/ petitioners in the present case is only Rs.3,00,000/-, I am of the view that the petitioners are entitled for the said amount as compensation. Accordingly, the cross-objections are allowed.

14. Second contention of the learned counsel for the appellant is that the 1st respondent has violated the terms and conditions of the policy, as the policy was issued for agriculture purpose but was used for commercial purpose, for supplying water in the colonies. According to the evidence of RW.1, who is an employee of the RTA Office, as the per the entry in Ex.B.2 abstract of register, the vehicle was registered in the name of the 1st respondent and it was registered under the category of agricultural purpose. According to the evidence of RW.3, Administrative Officer of the appellant-insurer, at the time of accident, the vehicle of the 1st respondent was insured with their company under Ex.B.5 policy. The policy shows that the vehicle should be used for agriculture purpose alone. The owner of the vehicle has not adduced any evidence to rebut the contention that at the time of accident, the vehicle was not used for any commercial purpose. In the absence of any evidence adduced by the owner of the tractor that he was using for his agriculture purpose, I am of the view that supplying of water to the colonies in Markapur town, through tanker would amount to commercial use and is a clear violation of the terms and conditions of the policy Ex.B.5, as it is registered for agriculture purpose. Hence, I am of the opinion that the owner of the vehicle has violated the conditions of the policy and hence, the insurance company is not liable to pay the compensation. In view of the same, the finding of the Tribunal that the owner and insurance

company-respondents are jointly and severally liable to pay the compensation is set aside. However, it is settled principle of law that if the owner of the vehicle violated the conditions of the policy, the insurer shall not be absolved from the liability. The Motor Vehicles Act is a beneficial piece of legislation, and the loss suffered by the victim has to be compensated by the Insurance Company, then the same can be recovered from the insured.

15. The Apex Court in '***National Insurance Co. Ltd. v. Swaran Singh***[2]' has elaborately discussed the subject on, violation of terms and conditions of the policy basing on various provisions of the Act and held that the insurance company has to pay the compensation to the claimants at the first instance and the insurance company in turn can recover the same from the insured. The Apex Court in '***Oriental Insurance Co. Ltd v. Nanjappan***[3], held as follows:

> "..We, therefore, are of the opinion that the interest of justice will be sub-served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer. "

In view of the decisions of the Apex Court referred to above, this Court is of the view that the appellant-insurer has to pay the amount of compensation to the claimants initially and in turn can recover the same from the insured.

16. Learned counsel for the appellant-insurer raised objection with regard to maintainability of the Cross-objections in the appeal filed

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[2] 2004 ACJ 1
[3] (2004)13 SCC 224

by the Insurance Company. The same is no more *res integra*, and the Hon'ble Supreme Court in a recent judgment in '***Urmiladevi & others vs. Branch Manager, National Insurance Co.Ltd.', (in*** Civil Appeal No.838 of 2020 dated 30.01.2020) held that the Cross-Objections filed by the claimants are maintainable in an appeal filed by the Insurance Company. Sub-rule (4) of Rule 22 of Order XLI of the CPC specifically provides, that even if the original appeal is withdrawn or is dismissed for default, the cross objection would nevertheless be heard and determined after such notice to the other parties as the court thinks fit.

17. Next contention of the learned counsel for the appellant is that the Tribunal awarded interest at 8% p.a. on the amount awarded, which is excessive. In the facts and circumstances of the case, I reduce the same from 8% to 7.5% p.a.

18. The appellant-insurer/2nd respondent is accordingly directed to deposit a sum of Rs.3,00,000/- (rupees three lakhs only) towards compensation with interest at 7.5% p.a. from the date of petition till the date of realization. This amount is inclusive of the amount, which is already granted. On such deposit, the petitioners shall apportion the same equally and are entitled to withdraw the same. The appellant is at liberty to recover the amount deposited by it from the insured as per the guidelines of the Hon'ble Supreme Court in ***Nanjappan's*** case.

19. Accordingly, the appeal is allowed partly to the extent stated above and the cross-objections are allowed. No order as to costs. Pending miscellaneous petitions, if any, in this appeal, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 30.01.2020
(BO)
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HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

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38

Date: 30.01.2020

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